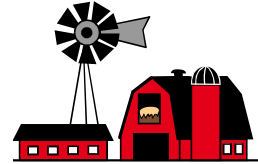




STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
Agricultural Lands Preservation Commission
c/o Department of Environmental Management
235 Promenade Street
Providence, RI 02908



AGRICULTURAL LANDS PRESERVATION COMMISSION
Minutes of the Thursday, May 19, 2016 meeting (FINAL)

COMMISSION MEMBERS PRESENT: Kevin Nelson, Everett Stuart, Martha Neale, Ken Ayars, Dave Wallace

COMMISSION MEMBERS ABSENT: Jon Reiner, George Mason

STAFF: Michelle Sheehan – DEM, Lauren Farley – DEM, Attorney Susan Forcier – DEM, Joseph Bachand - NRCS

GUESTS: Attorney Christopher D'Ovidio representing Little Compton resident Brian Eliason; Attorney Nicole J. Benjamin representing Dionysus Acquisition LLC d/b/a Carolyn's Sakonnet Vineyards; Attorney Anthony DeSisto representing the Little Compton Agricultural Conservancy Trust (LCACT); Carla and Brian Simmons – owners of Simmons Farm, Middletown; Russell Maymon – Director of Project Development, Energy Development Partners (EDP)

The meeting was called to order at 4:10 at USDA, 60 Quaker Lane, Warwick, RI by Kevin Nelson, Vice Chair.

On a motion by E. Stuart and a second by M. Neale, the Commission voted unanimously to move forward agenda item #4:

- 1. Sakonnet Vineyards, Main Road, Little Compton. Potential violation of Deed to Development Rights. Review of letter from DEM legal counsel. Discussion and possible action.** Multiple members of the public submitted comments related to this agenda item prior to the meeting. These comments were received and distributed to the ALPC members. Prior to inviting comment from interested parties, K. Nelson shared the DEM legal opinion sought by ALPC at their March 17, 2016 meeting. In the letter dated April 6, 2016, Mary Kay, DEM Executive Legal Counsel stated her opinion that the noise and use complaints related to the regularly scheduled weddings and concerts held at the Vineyards are outside of the purview of the DDR. The recently constructed bandstand located on Plat 22, Lot 8-9, however, is in the ALPC purview. It was erected by Dionysus without requisite approval from co-holders of development rights, the LCACT and ALPC. The DDR states that this building must be for "agricultural purposes" or whose primary use "shall be marketing products or value added on the farm from activities usually associated with the retail operation of a vineyard or winery." Dionysus is requested to submit plans to the ALPC for the building and a detailed description of intended use to determine their consistency with DDR.

N. Benjamin summarized the "MEMORANDUM SUBMITTED ON BEHALF OF DIONYSUS ACQUISITION LLC D/B/A CAROLYN'S SAKONNET VINEYARD IN SUPPORT OF REQUESTS FOR (1) WRITTEN STATEMENT CONCERNING DEED TO

DEVELOPMENT RIGHTS AND (2) APPROVAL OF CONSTRUCTION OF STRUCTURE” submitted to the ALPC on May 18, 2016. Dionysus requests that the ALPC issue a written statement that the entertainment activity proposed in their Entertainment License Application submitted to the Town of Little Compton is consistent with the terms of the DDR and that the construction of a pergola used in connection with weekly summer concerts be approved by ALPC retroactively. N. Benjamin contended that the pergola and associated concerts promote the perpetual protection of the agricultural lands and is beneficial to preservation by attracting the community and ensuring the Vineyard will remain successful. Attendees to the concerts are charged \$10 to park and receive a \$10 coupon for wine produced on the vineyard. 74% of the coupons are redeemed demonstrating that the concerts promote the sale of wine.

Regarding the construction of the pergola prior to approval of the LCACT and ALPC, N. Benjamin concedes that in hindsight this was a procedural oversight but the construction of the building is fully consistent with the terms of the DDR. Dionysus reserves the right in the DDR covenants, Exhibit “A” Par. B (2), the “construction or placing of buildings, structures, or parking areas for agricultural purposes, including buildings for related sales...” The structure is legal according to RIGL Chapter 42-82 and through the Right to Farm Act. It does not defeat the perpetual protection of the agricultural land and activities of this nature support agriculture. Under the terms of the DDR, ALPC and LCACT should approve the construction of the pergola retroactively.

C. D’Ovidio asked if the 4/6/2016 letter to ALPC by DEM Executive Counsel may be made public. Because of timing matters, it is now significantly germane. S. Forcier said it was available to the public. C. D’Ovidio sought clarification regarding what activities conducted by Dionysus were in the purview of ALPC, specifically if concerts and associated parking were considered agricultural activity. He cited the May 4, 2016 letter to LCACT by the United States Department of Agriculture – Natural Resource Conservation Service concluding that a technical assessment of the impacts of the activities on the protected property is forthcoming. K. Nelson informed C. D’Ovidio that no conclusions have been reached by ALPC at to date.

A. DeSisto spoke on behalf of the LCACT. An applicant for an entertainment license on land with conservation restrictions must provide a statement from the holder(s) of the easement affirming that the proposed activity is consistent with the terms of the restriction. LCACT, like the ALPC, has been asked by Dionysus to provide this statement, required by local ordinance. Many properties in Little Compton have an easement held by LCACT. LCACT wants to provide to ALPC and NRCS the opportunity to weigh in on the license request. The structure was approved by town building officials, not LCACT. LCACT has concerns regarding the compaction of soil and awaits NRCS determination. A Notice of Violation was provided to Dionysus concerning the construction of building. A draft management plan was developed by LCACT to address concerns with Dionysus but agreement was never reached. E Stuart asked if events historically held at the Vineyard for a number of years have expanded markedly. A. DeSisto responded that there have always been events but the Concert Series has expanded and caused increased concern. B. Richmond (attending member of LCACT) added that the regularity and volume of attendees has increased.

C. D’Ovidio asked if wetlands were identified in the parking areas of lots 8-9 and 8-6 in the operation plan requested by the Town Council. N. Benjamin stated that parking is not in the 50’ buffer of wetlands marked by Scott Robideaux. She furthered that the pergola is

appropriate due to provisions in the deed reserving right to place structures for agricultural purposes and cited legal findings in other states that support the notion that concerts held on vineyard property are for agricultural purposes. C. D'Ovidio asked if the construction of retail buildings were subject to prior written approval of easement holders. N. Benjamin asserted that procedurally the construction of the pergola should have been approved prior, but Dionysus is now exercising a substantive right, retroactively, to construct building that would have easily met conditions of deed. C. D'Ovidio cited the case of Greenvale Vineyards in Portsmouth where the Superior Court upheld the decision of the Portsmouth Zoning Board to deny permission to construct a wedding structure. K. Nelson asked DEM staff if a detailed plan of use was presented to DEM or ALPC. M Sheehan responded that plan was requested today via letter from M. Kay. N. Benjamin provided additional information regarding a Right to Farm legal case involving auxiliary uses on farms.

M. Neale motioned that the ALPC request a detailed operational and site plan. M. Benjamin asked what additional information the ALPC requires specifically as a parking /restroom plan and event schedule was previously submitted. S. Forcier noted that the Dionysus Memorandum had been submitted the day prior and Commissioners may not have had the opportunity to review it. The motion was withdrawn.

On a motion by E. Stuart and a second by D. Wallace, the Commission voted unanimously to move forward agenda item #5 and #7:

2. Review and consider for adoption the ALPC Alternative Energy Policy. Discussion and possible action

M. Sheehan shared the draft energy policy based on current ALPC practice and reflective of the restrictions in the Deed to Development Rights: "Renewable energy production is only allowed for the purpose of generating energy for the agricultural and residential needs of the Protected Property. Renewable energy installations must be approved by the ALPC, in its sole discretion, [and at a minimum shall be built and maintained within impervious surface limits (for projects with NRCS \$)], with minimal impact on the conservation values of the Protected Property and consistent with the Purposes of the Deed to Development Rights, as determined by the ALPC [and in compliance with the procedures outlines in section C.] Incidental and minimal sale of excess power to the commercial electrical grid is allowed for approved renewable energy sources." M. Sheehan also shared letter from M. Kay stating that the ALPC is only authorized to permit activities that are consistent with the purpose and terms and conditions of the DDR. K. Ayars, acknowledging that this is a charged issue asked if there is any testimonial on subject. K. Nelson asked if ALPC has received formal opinions from other additional parties with stake in decision. K. Ayars asked ALPC members if they would like to seek public comment since there is pressure on the current policy that only allows for on-farm use. Members were in agreement that additional comment is beneficial to either maintain or amend current policy and to make an informed decision that accounts for positions of stakeholders including the Office of Energy Resources and Bond Counsel. K. Nelson asked if DEM Legal has an intern that could provide briefing paper to include policy of other states, specifically in region; state energy policy / formal opinion of OER; and input from bond counsel. M. Sheehan will first get formal opinion from DEM legal as to whether there is any room for allowing commercial installations. Members discussed issues of siting and acknowledged that some protected land has very little agricultural value.

On a motion by M. Neale and a second by E. Stuart, the Commission voted unanimously to defer action pending further information provided by DEM staff.

3. **Simmons Farm, West Main Road, Middletown. Request to install a solar farm on 10 acres of this protected farm. Discussion and possible action.** C. Simmons addressed the Commission about the need to diversify their income in order to remain viable and productive. The development rights to the farm were sold decades ago by a previous owner and the proceeds from the sale did not go into the farm. They continuously make improvements to remain profitable including adding a goat dairy and pasture raised meats, and became certified organic, but still find themselves struggling. Simmons is looking to site a solar installation on a 10-acre section of the protected farm located on Green Lane. These 10 acres have never been used for farming and are proximate to grid infrastructure. The proposed panels would not be visible from West Main Road. Additionally, this section of the farm abuts Navy housing outfitted with solar panels. B. Simmons added that the farm is currently faced with over \$100,000 in needed infrastructure improvements and revenue generated from this proposed installation would greatly benefit the farm's operation. E. Stuart asked R. Maymon about soil disturbance during installation. R. Maymon responded that a steel I-beam is driven into the ground with support brackets for each panel and so they can be installed with minimal ground disturbance.

On a motion by M. Neale and a second by K. Ayars, the Commission voted unanimously to defer action pending the development of renewable energy policy.

4. **On a motion by D. Wallace and a second by E. Stuart, the Commission voted unanimously to approve of the minutes of the meeting of 3/17/16.**
5. **Review of current ALPC budget:** M. Sheehan provided update on current budget. The current balance is \$2,932,167.00. Current project commitments are \$172,000 to Andrews in Exeter, \$150,000 to Rippin in N. Kingstown, \$550,000 to Bailey, \$185,000 to Regnier/Fletcher Road, \$200,000 to Whaley Farm in South Kingstown, \$1,000,000 to Adams in Exeter, \$330,000 to Broadwall in Coventry, \$160,000 to Cesario in N. Smithfield, \$233,333 to Hibbad in Tiverton and \$200,000 to Dawson in Little Compton. Current overhead commitments (appraisals and survey) total \$85,000.

6. **Status update of farms in negotiation:**

Andrews, Ten Rod Road, Exeter – The P&S is signed and approved by the State Properties Committee. ACEP – ALE funding update from NRCS is forthcoming.

Adams, Glen Rock Road, Exeter – Champlin funding request is forthcoming.

7. **West Wind Farm, Reservoir Road, North Smithfield. Request to install a temporary solar array on one acre of this protected farm. Discussion and possible action.** Deferred
8. **Weeden Farm, Matunuck Schoolhouse Road, South Kingstown: update on South Kingstown Land Trust's amendment request.** M. Sheehan provided update. The Nature Conservancy, holder of reverter clause in Warranty Deed to SKLT, provided letter to the AG's office stating they could not support the proposed amendment. **On a motion by K. Ayars and a second by M. Neale, the Commission voted unanimously not to approve the amendment request respective of TNC statement.**
9. **Harmony Farm, Saw Mill Road, Glocester. Request to subdivide a portion of this protected farm for sale to another farmer.** M. Sheehan presented ALPC with a request from the owner to retain northern portion of protected land, AP 18, Lot 147 and sell Southern portion AP 18, Lot 148. D. Wallace asked if this was really a subdivision since the parcels

are already separate lots. **On a motion by K. Ayars and a second by M. Neale, the Commission voted unanimously to defer action until DEM legal offers clarification on DDR subdivision terms.**

10. Scoring New Applications:

Phoenix Rising Farm, Pound Hill Road, North Smithfield: The farm was scored by the Commission and achieved an average score of 35. As the minimum score for acceptance into the program is 35, the Farm could not be accepted into the program.

Sweetland Farm, Log Road, Smithfield: Scoring deferred

11. **Amendment policy. Update on development of the policy:** M. Sheehan provided update. Meetings with DEM legal and the AG's office are continuing. Legal intern is working with DEM staff to present draft policy to Commission at upcoming meeting.

12. **Farmland Acquisition Program: brief update on progress with the Rules & Regulations:** M Sheehan provided update. The regulatory process is beginning and public comment process is forthcoming.

13. **NRCS Agricultural Conservation Easement Program: update on program:** J. Bachand provided update. Wells, Whaley and Madison are on track and should close soon.

Additional business:

Expired Commission appointments will not be extended. The goal is to fill vacated seats with new members by the conclusion of legislative session.

Brief discussion about the need to re-examine the subdivision prohibition. D. Wallace mentioned problems with access to land for new farmers. M. Neale stressed the need to prevent "big backyards". K. Ayars asked that the next agenda include discussion of the subdivision prohibition in DDR

There being no further business, on a motion by M. Neale, seconded by D. Wallace, the Commission voted unanimously to adjourn the meeting at 6:30.